



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ADP Case No. 15-01446  
)  
Applicant for Position of Trust )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2016

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate trustworthiness concerns under Guideline F, financial considerations. Eligibility to occupy a position of trust is denied.

**Statement of the Case**

On August 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. DOD CAF took that action under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); Department of Defense 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant eligibility to occupy a position of trust. On September 22, 2015, Applicant answered the SOR and requested a hearing. This case was assigned

to me on January 7, 2016. On February 2, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for February 25, 2015. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified and offered no exhibits. The transcript (Tr.) of the hearing was received on March 4, 2016.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. She has been working for that employer since February 2013. She graduated from high school in 1996 and earned an associate degree in 2004. She is married and has two children, ages 15 and 21. She has served in a position of trust since February 2013.<sup>1</sup>

The SOR alleged that Applicant had 25 delinquent debts totaling \$25,982 (SOR ¶¶ 1.a –1.y). In her Answer to the SOR, she admitted each allegation. Her admissions are incorporated as findings of fact.<sup>2</sup>

Applicant attributed her financial problems to periods of unemployment for her and her husband, having low-paying jobs, and the burden of raising two children. She was unemployed from November 2011 to February 2013 when her contract with a company ended. She also was unemployed from January 2011 to July 2011 and from June 2005 to October 2005. She received unemployment compensation during her periods of unemployment. Her husband is a machine operator who was unemployed for a couple of months in 2011 when they moved to their present location. At their prior residence, he worked off and on at temporary jobs. Applicant also mentioned that she suffered from medical problems that have caused her to miss work.<sup>3</sup>

Applicant testified that she had not recently made any payments toward the alleged debts. She believed she made the last payment on those debts in 2013. She has not received any financial counseling. In her Office of Personnel Management interview in January 2013, she indicated that she would contact creditors in an attempt to make payment arrangements, but has not done so. She has not contacted a debt consolidation company, but indicated she planned to do so in the next month or so. She does not currently use credit cards. She stated that she and her husband are paying their everyday bills and have not incurred any new delinquent debts in the past two years.<sup>4</sup>

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<sup>1</sup> Tr. 6-7, 21; GE 1.

<sup>2</sup> Applicant's Answer to the SOR; GE 2, 3.

<sup>3</sup> Tr. 20-21, 26-28; GE 1, 4.

<sup>4</sup> Tr. 20-21, 24-26; GE 4.

Applicant's annual salary is \$21,000. Her husband's annual salary is \$36,000. They currently rent a home, but are planning to buy one. She estimated that her net monthly remainder (monthly income minus monthly expenses and debt payments) was about \$300 to \$400 a month. At the time of the hearing, she had about \$35 in a checking account and \$4,000 in a savings account. She recently received the \$4,000 as a settlement on an insurance claim.<sup>5</sup>

### **Policies**

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>5</sup> Tr. 21-26.

relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

## **Analysis**

### **Guideline F, Financial Considerations**

AG ¶ 18 sets forth the trustworthiness concern for financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 lists several disqualifying conditions that could raise trustworthiness concerns. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

In this case, Applicant accumulated delinquent debts that she was unable or unwilling to satisfy for an extended period. The evidence is sufficient to establish the above disqualifying conditions.

Four mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant and her husband have experienced periods of unemployment. Additionally, she has suffered from medical problems. While their periods of unemployment and her medical problems were conditions beyond her control that contributed to her financial problems, she failed to establish that she acted responsibly under the circumstances for AG ¶ 20(b) to fully apply. Even though she and her husband have been employed for the past three years, she failed to initiate contact with the creditors, make payments toward the alleged debts, or take any other meaningful steps to resolve them. Her financial problems remain ongoing and significant. From the evidence presented, I am unable to find that her financial problems will be resolved within a reasonable period. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

### **Whole-Person Concept**

In position of trust adjudications, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.<sup>6</sup> In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the trustworthiness concerns at issue. Applicant failed to meet her burden of persuasion. Her unresolved financial problems leave me with doubts as to her current eligibility to occupy a position of trust. Following the “clearly consistent with national interests of national security” standard, such doubts must be resolved in favor of national security.

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<sup>6</sup> The nine adjudicative process factors listed at AG ¶ 2(a) are:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

## **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:           AGAINST APPLICANT

Subparagraphs 1.a – 1.y:           Against Applicant

## **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy a position of trust. Eligibility to access sensitive information is denied.

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James F. Duffy  
Administrative Judge